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October 16, 1998

VIA COURIER

Magalie Roman Salas, Esq.
Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
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Re: CC Docket No. 98-147: In re Deployment of Wireline Services Offering Advanced Telecommunications Capability - Reply Comments of Florida Digital Network, Inc.

Dear Ms. Salas:

Florida Digital Network, Inc. ("FDN"), by its undersigned counsel, encloses for filing an original and four (4) copies of FDN's reply comments in the above-referenced proceeding. As required by the Commission, a copy of this filing has been submitted on diskette in WordPerfect version 5.1 to Janice Myles in the Common Carrier Bureau's Policy and Program Planning Division, and one (1) copy of this filing has been filed with International Transcription services both on diskette and on paper.

Please date stamp the enclosed extra copy of this filing and return it in the self-addressed, postage prepaid envelope provided. If you have any questions concerning this filing, please do not hesitate to contact Kevin Minsky at (202) 945-6920.

Very truly yours,



Dana Frix
Patrick Donovan

Counsel for Florida Digital Network, Inc.

Enclosures

cc: Janice Myles (CCB PPPD)
International Transcription Services, Inc.
Mike Gallagher
Kevin D. Minsky

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**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of

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Deployment of Wireline Services

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CC Docket No. 98-147

Offering Advanced Telecommunications

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Capability

)

**REPLY COMMENTS OF
FLORIDA DIGITAL NETWORK, INC.**

Dana Frix
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Dated: October 16, 1998

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SUMMARY

The Commission should not adopt its advanced services affiliate proposal that would allow incumbent local exchange carriers ("ILECs") to provide advanced services through separate affiliates. The Commission's advanced services affiliate proposal will not achieve the Commission's objective of promoting advanced services because, as the ILECs' comments demonstrated, they have no interest in providing service through a truly independent affiliate. Moreover, the ILECs' proposed modifications to the FCC's proposal would permit a degree of joint operation that would make the affiliate a "successor or assign" subject to the obligations of the parent ILEC. However, if the separate affiliate proposal is adopted, there should be no sunset period for the separation requirements until the ILECs have been declared non-dominant carriers.

FDN believes that the Commission should encourage the provision of advanced services by ILECs and competitive local exchange carriers ("CLECs") through the full enforcement of the interconnection obligations of the Act. The Commission should adopt the additional collocation methods proposed in the *Section 706 NPRM*. Specifically, the Commission must adopt rules that require ILECs to allow the collocation of any equipment that is used by CLECs for interconnection or access to unbundled network elements even if the equipment includes switching functionalities. The ILECs' initial comments have failed to show that these proposals should not be adopted. In addition, the Commission should not adopt its proposal to permit Bell Operating Companies ("BOCs") to modify LATA boundaries in order to facilitate access to high-speed Internet access.

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**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Deployment of Wireline Services)	CC Docket No. 98-147
Offering Advanced Telecommunications)	
Capability)	

**REPLY COMMENTS OF
FLORIDA DIGITAL NETWORK, INC.**

Florida Digital Network, Inc. ("FDN"), by its undersigned counsel, respectfully submits its reply comments in the above-captioned proceeding concerning the deployment of advanced telecommunications services.¹ FDN submitted initial comments in this proceeding.²

I. INTRODUCTION

FDN has obtained certification as a provider of local exchange service in Florida. FDN plans to provide advanced services, including xDSL, to residential and business customers in various cities throughout Florida.

FDN believes that the Commission should promote competition in the provision of advanced services through the adoption of strengthened collocation requirements, such as those proposed in the *Section 706 NPRM*, rather than through the Commission's advanced services separate affiliate proposal. These measures will assist new entrants in obtaining interconnection and will facilitate

¹ *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, Notice of Proposed Rulemaking, CC Docket No. 98-147, FCC 98-188 (released August 7, 1998) ("*Section 706 NRPM*").

² Comments of Florida Digital Network, Inc. filed on September 25, 1998.

the deployment of advanced services on reasonable terms and in a timely manner. Moreover, FDN believes that the advanced services affiliate proposal is unrealistic and unlawful, and would fail to promote the goals of the Communications Act of 1934, as amended (the “Act”).

II. THE COMMISSION SHOULD NOT ADOPT ITS SEPARATE AFFILIATE PROPOSAL

The Commission’s *Section 706 NPRM* proposes to allow ILECs to establish separate affiliates in order to provide advanced services free from the key market-opening provisions of the Section 251 of the Act.³ This proposal would not achieve the Commission’s objectives, and as FDN’s initial comments stated, such an advanced services affiliate would be a “successor or assign” under Section 251(h) of the Act.⁴

The Commission’s key assumption supporting its separate affiliate proposal – *i.e.*, ILECs would be encouraged to provide advanced services if they can do so on an unregulated basis through a “truly” independent separate affiliate – is undermined by the ILECs’ initial comments. The ILECs’ stated that they would not be interested in providing advanced services through a separate affiliate because of the costs and alleged inefficiencies of creating separate affiliates would reduce or eliminate any incentive to provide advanced services in that manner.⁵ Because of these statements by the ILECs, the Commission cannot rationally conclude on the present record that its advanced

³ 47 U.S.C. § 251(h)(1) (1997); *Section 706 NPRM* at ¶ 92.

⁴ FDN at 2.

⁵ Bell Atlantic at 23; BellSouth at 13; CBT at 4-8; GTE at 38; USTA at 4; TEC at 3-8; US West at 17,18; Kiesling at 8; Moultrie at 4; NCTA at 3; NRTA at 6.

services affiliate proposal would promote its stated objectives. Therefore, the Commission may not adopt its separate affiliate proposal.

Moreover, FDN believes that all of the ILECs' stated modifications to the Commission's advanced services affiliate proposal would involve a substantial degree of joint operation and enterprise between the ILEC and advanced services affiliate and, therefore, make the affiliate a "successor or assign" which is prohibited under Section 251(h) of the Act. The Commission should reject the ILECs' proposal to impose separation requirements based on those adopted in *Competitive Carrier Order*⁶ for the provision of long distance services by independent LECs because such a proposal would make the affiliate a "successor or assign" of the ILEC.⁷ These requirements in the *Competitive Carrier Order* may permit common personnel, joint management, joint ownership of all facilities other than local exchange service facilities, and complete ownership and direction of the affiliate by the incumbent. FDN asserts that this amount of joint enterprise would make the affiliate a "successor or assign" of the ILEC. The ILECs' proposed reliance on the Commission's affiliate

⁶ *Policy and Rules Concerning rates for Competitive Common Carrier Services and Facilities Authorizations*, Fifth Report and Order, CC Docket 79-252, 98 FCC 2d 1191 (1984) ("*Competitive Carrier Order*").

⁷ According to ILEC commenters, the affiliate would not be deemed an incumbent under the *Competitive Carrier* requirements if it (1) maintains separate books of account; (2) does not jointly own transmission or switching facilities with the incumbent that the incumbent used for the provision of local exchange services in the same in-region market; (3) acquires telecommunications facilities, services, or network elements from the affiliate LEC pursuant to tariff or negotiated agreement under Section 251 and 252 of the Act; and (4) acquires non-telecommunications services from the incumbent on an arm's length basis pursuant to the Commission's affiliate transaction rules. BellSouth at 34-35, 37; GVNW at 3; TCA at 6; US West at 25-28.

transaction rules is improper because those rules permit virtually any transaction between an incumbent and its affiliate as long as certain pricing standards are met.⁸ Therefore, these rules would provide no assurance that the affiliate would be operating independently from its ILEC parent.

In addition, the Commission should reject the ILECs' suggestion that it adopt *Computer III* nonstructural safeguards because implementation of the *Computer III* safeguards would involve the direct provision of advanced services by ILECs who would be fully subject to Section 251(c) obligations.⁹

FDN submits that, as shown in its initial comments, the Commission's proposal to give incumbent LECs the incentive to provide advanced services through a separate affiliate is

⁸ See 47 C.F.R. § 32.27 (1997).

⁹ *Amendment of Section 64.702 of the Commission's Rules and Regulations (Computer III)*, Report and Order, CC docket No. 85-229, Phase I, 104 FCC 2d 958 (1986) (*Phase I Order*), recon., 2 FCC Rcd 3035 (1987) (*Phase I Recon. Order*), further recon., 3 FCC Rcd 1135 (1988) (*Phase I Further Recon. Order*), second further recon., 4 FCC Rcd 5927 (1989) (*Phase I Second Further Recon.*), *Phase I Order and Phase I Recon. Order, vacated, California v. FCC*, 905 F.2d 1217 (9th Cir. 1990) (*California I*); Phase II, 2 FCC Rcd 3072 (1987) (*Phase II Order*), recon., 3 FCC Rcd 1150 (1988) (*Phase II Recon. Order*), further recon., 4 FCC Rcd 5927 (1989) (*Phase II Further Recon. Order*), *Phase II Order vacated, California I*, 905 F.2d 1217 (9th Cir. 1990); *Computer II Remand Proceedings*, 5 FCC Rcd 7719 (1990) (*ONA Remand Order*), recon., 7 FCC Rcd 909 (1992); *pets. for review denied, California v. FCC*, 4 F3d 1505 (9th Cir. 1993) (*California II*); *Computer III Remand Proceedings: Bell Operating Company Safeguards and Tier 1 Local Exchange Company Safeguards*, 6 FCC Rcd 7571 (1991) (*BOC Safeguards Order*), recon. dismissed in part, Order, 11 FCC Rcd 12513 (1996); *BOC Safeguards Order vacated in part and remanded, California v. FCC*, 39 F.3d 919 (9th Cir. 1994) (*California III*), cert. denied, 115 S.Ct. 1427 (1995) (referred to collectively as the *Computer III proceeding*). The Commission is addressing modifications to those rules in another proceeding, *Computer III Further Remand Proceedings, Bell Operating Company Provision of Enhanced Services, 1998 Biennial Regulatory Review – Review of Computer III and ONA Safeguards and Requirements*, CC Docket Nos. 95-20 and 98-10, Further Notice of Proposed Rulemaking, 13 FCC Rcd 1640 (1998).

fundamentally flawed.¹⁰ If the separate affiliate is truly independent, ILECs would have no desire to establish it. On the other hand, if the ILECs' modifications to the separate affiliate proposal were adopted, the Commission would be forced to cross the line and permit a degree of joint operation that would make the affiliate a "successor or assign" under Section 251(h) of the Act. Accordingly, FDN urges the Commission to abandon its separate affiliate proposal. If the Commission adopts its separate affiliate proposal, the structural separation requirements should not sunset until the ILECs are declared to be non-dominant carriers.

III. THE COMMISSION SHOULD ADOPT STRENGTHENED COLLOCATION REQUIREMENTS

A. National Standards

The Commission should adopt additional national collocation requirements in order to promote the deployment of advanced services. As stated in FDN's initial comments, the present collocation rules create additional costs for small competitive carriers and are a barrier to competition.¹¹ The adoption of national minimum collocation standards would promote competition by providing greater predictability and certainty for investment and minimize the time and expense required for collocation.

¹⁰ FDN at 2-4.

¹¹ FDN at 8.

B. Equipment Eligible for Collocation

The Commission should permit the collocation of any equipment that is used for either interconnection or access to unbundled network elements even if such equipment includes other functionalities such as switching. As stated in the *Section 706 NPRM*, the latest telecommunications equipment can perform a number of functions, including switching, beyond the narrow functions of interconnection or access to unbundled network elements.¹² New entrants would face significant costs if they were required to purchase separate equipment for interconnection and switching instead of being able to take advantage of more efficiently designed equipment. Therefore, the Commission should permit collocation of any equipment that would facilitate the deployment of advanced services, including equipment containing switching functionalities. Moreover, the Commission should adopt its tentative conclusion that ILECs must allow CLECs to collocate equipment to the same extent they allow their advanced services affiliates to collocate such equipment.¹³

C. Cageless Collocation

Cageless collocation enables new entrants to collocate equipment in incumbent central offices without incurring the significant costs and delays of obtaining and installing cages. ILECs opposed to cageless collocation have not demonstrated that more affordable central office security measures, such as electronic monitoring, would not provide adequate security, and as some ILECs

¹² *Section 706 NPRM* at ¶ 128.

¹³ *Section 706 NPRM* at ¶ 129.

already permit cageless collocation.¹⁴ Accordingly, the Commission should require ILECs to permit cageless collocation as an alternative form of collocation.

D. Installation Intervals

The Commission should eliminate the ILECs' ability to stifle competition in the deployment of advanced services by imposing reasonable national time intervals for ILECs to follow when satisfying their collocation and unbundling obligations under the Act. The ILECs' contend that the timeliness of their provision of collocation and unbundled network elements should be supervised by the states on a case-by-case basis; however, this approach would merely preserve the *status quo*.¹⁵ FDN's believes that the timeliness of ILECs' provisioning of collocation and unbundled network elements should be subject to national performance standards adopted by the Commission.

IV. THE COMMISSION SHOULD NOT MODIFY LATA BOUNDARIES TO ALLOW BOC PROVISION OF HIGH-SPEED INTERLATA ACCESS

The Commission should refuse to adopt any modifications to LATA boundaries to allow BOCs to provide high-speed interLATA access. The ILECs' initial comments on this issue amount to no more than premature requests to be relieved from the interLATA restrictions of Section 271.¹⁶

¹⁴ Bell Atlantic 33-35; CBT at 23; GTE at 68; US West at 40; SBC at 22-26; Ameritech at 42.

¹⁵ Ameritech at 46; BellSouth at 46-47; GTE at 97; SBC at 29, 45; US West at 42.

¹⁶ Ameritech at 58, 62; Bell Atlantic at 3-4; BellSouth at 32-33; SBC at 10; US West at 50-54.

As the Commission previously decided, large-scale changes in LATA boundaries would be unlawful until the ILECs comply of Section 271 of the Act.¹⁷

Furthermore, the Commission does not need to modify LATA boundaries in order to facilitate access to the Internet backbone. As FDN stated previously, numerous interexchange carriers have the capacity to provide high-speed access to the Internet.¹⁸ There is no rational basis to assume that other carriers will not do so where demand for this access exists. FDN believes that allowing BOCs to move LATA boundaries so that Internet nodes would be encompassed within a single LATA would severely undermine the Act's interLATA restrictions as a meaningful limit on BOCs' ability to provide interLATA service. Accordingly, the Commission must not permit BOCs to modify LATA boundaries in order to facilitate high-speed access to the Internet backbone.

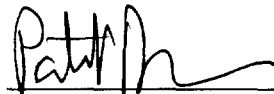
¹⁷ *Section 706 NPRM* at 82.

¹⁸ FDN at 6-7.

V. CONCLUSION

For these reasons specified herein, FDN respectfully requests that the Commission not adopt its proposal to permit ILECs to offer advanced telecommunications services through a separate advanced services affiliate. In the event the Commission adopts its separate advanced services affiliate proposal, the separation safeguards should not sunset until the ILECs are declared non-dominant carriers. Furthermore, FDN urges the Commission to adopt its additional proposed collocation requirements which would permit competing carriers to collocate any equipment used for interconnection or access to unbundled network elements including equipment with switching functionalities. Finally, the Commission should deny the BOCs' requests for LATA boundary modifications until they are in full compliance with the market-opening provisions of Section 271 of the Act.

Respectfully submitted,



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Date: October 16, 1998

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*Section 706 NPRM Reply Comments of Florida Digital Network, Inc.
October 16, 1998*

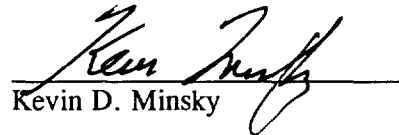
CERTIFICATE OF SERVICE

I, Kevin D. Minsky, hereby certify that I have on this 16th day of October, 1998, served copies via hand delivery of the foregoing Reply Comments of Florida Digital Network, Inc. on the following:

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